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Before the

DEC 18 1998

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
) IB Docket 98-118
1998 Biennial Regulatory Review -)
Review of International Common Carrier)
Regulations)

Comments of the Secretary of Defense

The Secretary of Defense, through duly authorized counsel, pursuant to Section 201 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 481, and the Memorandum of Understanding between the Department of Defense and the General Services Administration dated November 27, 1950, hereby files these comments in the above captioned proceeding.

In this proceeding, the Commission continues its efforts to eliminate regulations that are unduly burdensome or no longer serve the public interest, focusing in this instance on regulations administered by its International Bureau. While the Department of Defense (DOD) understands the Commission's attempts to eliminate unnecessary

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paperwork and effort, national security concerns must be addressed before the proposals can be adopted.

Blanket Section 214 Authorization for International Service to Unaffiliated Points

The Commission proposes to issue blanket 214 certificates for the provision of international telecommunications services on unaffiliated routes. The blanket authorization would allow a non-dominant carrier to provide facilities-based service, or to resell the international services of other carriers, to any international point except a market in which an affiliated carrier operates. A carrier is to notify the Commission within 30 days of commencing service under the blanket Section 214 authorization. (Proposed Rule Section 63.25c.)

In comments filed in proceedings related to Commission implementation of the World Trade Organization Basic Telecommunications agreement, DOD stated that there should be no assumption in favor of approval applied with respect to a public interest review for national security. In its decision in that proceeding, the Commission concurred and agreed to seek input from the Executive Branch on matters of national security, law enforcement, foreign policy and trade prior to the issuance of authority to allow a foreign owned carrier to operate in the United States. In the

instant proposal, the Commission again recognizes the need to consider those public interest factors.¹ Questions arise, however.

The Commission outlines two specific opportunities to address Section 214 applications. The first would be a pre-grant review when considering the blanket application itself. It is assumed that procedures between the Commission and the Executive Branch currently in place governing such reviews would continue. Confirmation of the truth of that assumption is requested.

The Commission apparently also proposes to specifically afford interested parties the opportunity to seek a post-grant conditioning or revocation of an existing Section 214 certificate after the carrier has notified the Commission that it has commenced service on a particular route. The likelihood of the necessity for a review of the commencement of service under a blanket authorization would to some extent depend on the specificity and the continued relevancy of the information contained in the original blanket application. It is noted that the proposed initial application for global authority is to list any countries for which the applicant does NOT request authority.

(Proposed Rule Sections 63.18(e)(1) and (2)). It is likely

¹ Notice Of Proposed Rulemaking, par. 10.

the review of the initial application should provide a reasonable opportunity to conduct a national security review. Over time, however, circumstances may change. A situation could arise where the original blanket Section 214 application passed public interest (including national security) muster, but later a particular route could cause concern such that DOD might seek a condition or revocation of the Section 214 authority as it related to that particular route.

While the Commission states it might condition or revoke an already issued Section 214 certificate under appropriate circumstances, the process is not specified.² Post-grant conditioning of a Section 214 authorization is not something that happens every day, or ever. Revocations, at least pursuant to 47 U.S.C. 312, require a hearing unless waived. The Commission should outline the procedures it considers necessary to effectuate either a

² Section 214 by its terms indicates the Commission can condition the "issuance" of a certificate and that the carrier may thereafter, without seeking further approval, proceed with the construction authorized. There is no apparent authority in Section 214 to impose conditions after the initial grant of authority. Moreover, the revocation authority set forth in Section 312 of the Communications Act would not appear to grant the Commission the authority to revoke a Section 214 certificate. The Commission's authority to either condition an already granted Section 214 certificate or to revoke it may be founded on 47 U.S.C 154(i) or 201(b), both cited in the ordering clause of the notice.

conditioning or a revocation. Unwieldy procedures related to national security would not serve the public interest.

An additional matter should be mentioned. Section 214 requires the Commission to cause a copy of a Section 214 application to be served on the Secretary of Defense. Notifications of the commencement of operations under the blanket 214 authorization are proposed to be sent only to the Commission. A copy of the notice should also be provided to the Secretary of Defense if the Commission adopts its proposal herein.

Forbearance from Pro Forma Assignments and Transfers of Control and Provision of Service by Wholly Owned Subsidiaries

The Commission has tentatively decided to forbear from the prior notification and approval requirements for *pro forma* transfers of control for international Section 214 applications and to amend its rules to provide that an international Section 214 authorization also authorizes a carrier to provide service through its wholly owned subsidiaries. DOD does not object to this streamlining effort so long as these Section 214 authorizations could in a convenient fashion be subject to post-grant conditions or revocations under appropriate circumstances.

**Section 214 Authorization for Construction of New Submarine
Cable Facilities**

The Commission notes that applicants for common carrier cable landing licenses currently must file two applications, one for a cable landing license under the Submarine Cable Landing License Act and the other for a Section 214 authorization. The Commission has tentatively concluded that no useful purpose is served by requiring a carrier that is authorized to serve a given route on a facilities basis to apply for additional Section 214 authority for the construction of a new undersea cable on that route. As a result, it proposes to eliminate the need to apply for separate Section 214 authority when a carrier seeks to construct and operate a new common carrier cable system between the United States and foreign points for which it is already authorized to provide facilities-based service.³ The application pursuant to the Submarine Cable Landing License Act would still be required.

Executive Order 10530 delegated to the Commission the President's authority under the Submarine Cable Landing License Act to grant licenses. The Commission obtains approval from the Department of State after consultation

³ If the carrier had already obtained a blanket Section 214 authorization, it would presumably not be required to file a separate Section 214 application for the submarine cable.

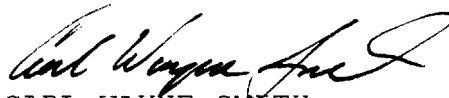
with and advice from other Executive Agencies. Until recently, it was typical for DOD, as part of the consultative process, to ask that the grant of the license be conditioned on U. S. entity ownership of the cable landing station. As a participant in the Commission's rulemaking proceedings relating to the World Trade Organization Basic Telecommunications agreement, DOD agreed not to ask for the ownership condition as a matter of course, but to consider the applications on a case by case basis. DOD believes that the national security interest for which it is responsible can be addressed by a pre-grant review of the cable landing license application alone, and that no separate Section 214 application is necessary under the circumstances identified by the Commission.

DOD however proposes a change to Commission Rule 1.767, Cable Landing Licenses. DOD proposes that the applicant be required to identify the owner of the cable landing station to be utilized and the owner's citizenship. DOD intends to continue to examine these applications on a case by case basis. Its review would be expedited if cable station ownership information were required to be included on the application itself.

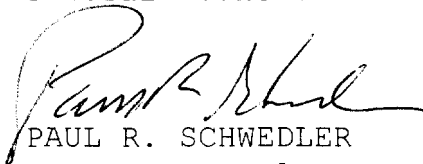
CONCLUSION

DOD supports the Commission's efforts to eliminate unnecessary paperwork but is concerned that the processes that may be required to impose post-grant conditions on or revoke Section 214 authorizations may be too burdensome to be of any practical value. DOD urges the Commission to adopt its proposed rule changes relating to notice to the Secretary of Defense of service commencement under a blanket Section 214 authorization and requiring ownership information for cable landing stations as part of the application.

Respectfully submitted,



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